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Honorable Wm. Fremming Nielson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RANDY D. MCREYNOLDS,

Defendant.

Case No. 2:21-CR-00028-WFN

RANDY MCREYNOLDS' TRIAL
MEMORANDUM

I. INTRODUCTION

This is a simple case: Can the Government establish, beyond a reasonable doubt, that Randy McReynolds possessed a firearm in violation of 18 U.S.C. 922 (g)(1) and 924 (a)(2)? The evidence will establish the answer in the negative. And due to the weakness of the Government's case against Mr. McReynolds, it is

RANDY MCREYNOLDS' TRIAL MEMORANDUM: 1

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1 anticipated that the Government will attempt to drag in irrelevant and unnecessary
2 information to prejudice the jury against Mr. McReynolds.
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4 **II. FACTS AND LAW**

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6 Mr. McReynolds denies the allegations contained in the Indictment,
7 specifically that he knowingly possessed the following:
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9 -A Ruger, Model GP 100 .357 Magnum Caliber Revolver, bearing serial
10 number 173-14745;
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12 -4 rounds Federal 357 Magnum Ammunition;
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14 -41 rounds Blazer 357 Magnum Ammunition;
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16 -57 rounds PMC 9 mm Luger ammunition;
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18 -45 rounds R-P 9 mm Luger ammunition;
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20 -44 rounds Win 25 Auto Ammunition;
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22 -1 round W.W. Super 357 Magnum Ammunition;
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24 -6 rounds R-P 30-30 Win Ammunition;
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26 -1 round Frontier 30-30 Win Ammunition;
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28 -1 Round FC 30-30 Win Ammunition;
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30 -1 Round Super-X 30-30 Win Ammunition; and
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32 -20 rounds Winchester 38 SPL Ammunition.
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1 The evidence presented at trial will unequivocally show the Government will
2 not be able to establish key elements of the statute burden beyond a reasonable
3 doubt. Indeed, the applicable criminal statute that the Government cited and relied
4 upon it is indictment reads as follows: “it shall be unlawful for any person who has
5 been convicted in any court of, a crime punishable by imprisonment for a term
6 exceeding one year to possess any firearm or ammunition.” 18 U.S.C. 922(g)(1).
7 Under 9th Circuit case law, the Government must establish that Mr. McReynolds
8 “knowingly” possessed the fire arm, i.e., that the defendant “consciously possessed
9 what he knew to be a firearm.” *United States v. Benamor*, 937 F.3d 1182, 1186 (9th
10 Cir. 2019); *United States v. Beasley*, 346 F.3d 930, 934 (2003). The definition of
11 “Knowingly” is found in 5.17 of the Model Jury Instructions, which provides: “An
12 act is done knowingly if the defendant is aware of the act and does not act through
13 ignorance, mistake, or accident.”
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23 The 9th Circuit Model Jury Instruction relevant to this matter is 8.65,
24 “FIREARMS-UNLAWFUL POSSESSION.” This instruction sets forth the
25 elements the prosecution must meet, beyond a reasonable doubt, to convict Mr.
26 McReynolds of unlawful possession of a firearm. The Comment section specifically
27 refers to instruction 8.63 and 3.17 for a discussion of “Knowingly.”
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1 Here, the Government will not be able to carry its high burden and establish
2 that Mr. McReynolds consciously possessed the firearm and ammo set forth in the
3 Indictment. Evidence offered by Defendant will establish how and when the firearm
4 and ammo entered Mr. McReynolds' residence without his knowledge. The
5 evidence will further establish that, given the facts, it was impossible for Mr.
6 McReynolds to knowingly, or consciously, possess either the specific firearm or
7 ammo alleged in the indictment.
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9 It is anticipated the Government will parade several witnesses before the jury
10 who will claim they saw Mr. McReynolds have "a gun" or that Mr. McReynolds
11 made verbal referenced to "a gun." First, it will be demonstrated these witnesses
12 are not speaking the truth and are not credible. And, allowing this testimony to go
13 before the jury would require the jury to speculate that the "gun" referenced by
14 these witnesses specifically referred to Ruger, Model GP 100 .357 Magnum Caliber
15 Revolver set forth in the indictment. Such testimony is inadmissible.
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17 Furthermore, the Government must establish that Mr. McReynolds knowingly
18 possessed each of the alleged ammo set forth in the indictment. The Government
19 cannot clump the gun and ammo together in its presentation to the jury. Every
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1 element of 18 U.S.C. 922(g)(1) must be show for each individual item set forth in
2
3 the indictment.

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5 III. CONCLUSION

6 Based on the foregoing, the Court should give the following instructions to
7
8 the jury: 1.1, 1.2, 1.3, 1.4, 1.5, 1.6,. 1.7, 1.8, 1.9, 1.10, 3.1, 3.2, 3.3, 3.5, 3.6, 3.7,
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10 3.9, 3.10, 4.4, 5.7, 7.1, 7.4, and 8.65 .

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12
13 DATED this 10th day of May, 2021.

14
15
16 s/Kent Neil Doll, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Michael J. Ellis

David M. Herzog

/s/Kent N. Doll, Jr.
of Kirkpatrick & Startzel, P.S.